IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 3368 of 2007(A)

PETITIONERS:

1. MRS.NAJMA MUSTHAFFA, W/O.MUSTHAFFA,
   AGED 42 YEARS, FATHIMA MANZIL,
   MADHAVAN NAIR ROAD, KOZHIKODE.

2. DR.ALI FAISAL,
   S/O.DR.LATE M.K.MUHAMMED KOYA, AGED 41 YEARS,
   FATHIMA MANZIL, MADHAVAN NAIR ROAD,
   KOZHIKODE.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

1. STATE OF KERALA REP.BY ITS
   ADDITIONAL COMMISSIONER, LAND REVENUE ,
   LAND REVENUE COMMISSIONERATE,
   TRIVANDRUM.

2. DISTRICT COLLECTOR,
   KOZHIKODE.

3. SPECIAL TAHSILDAR (LA),
   CIVILSTATION, CIVIL STATION P.O.,
   KOZHIKODE 673020.

ADDL.R4: EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT(ROADS)
DIVISION, KOZHIKODE

IS IMPLEADED AS ADDL.R4 AS PER ORDER IN IA NO.10305/07 DATED 1.8.2007.

BY SR. GOVERNMENT PLEADER SHRIN BENNY VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, ALONG WITH WPC NO. 3484 OF 2007 AND CONNECTED CASES THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C) NO.3368/2007

PETITIONERS' EXHIBITS:

EXT.P1 PHOTOSTAT COPY OF THE NOTIFICATION PUBLISHED IN MATHRUBHUMI DATED 1.4.2005

EXT.P2 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS BEFORE THE THIRD RESPONDENT DATED 20.4.2005

EXT.P3 TRUE COPY OF THE ROUGH SKETCH OF THE PROPERTY SOUGHT TO BE ACQUIRED

EXT.P4 PHOTOSTAT COPY OF THE JUDGMENT OF THIS COURT IN WP(C) NO.31831/2005 DATED 16.11.2005

EXT.P5 TRUE COPY OF NOTIFICATION BEARING NO.LR C4-43927/2006 DATED 27.10.2006 PUBLISHED IN MATHRUBHUMI DATED 24.1.2007

K. PADMANABHAN NAIR ,J.

W.P.(C) Nos.3368 of 2007 A
3484 of 2007 M
4064 of 2007 H
4107 of 2007 L
4435 of 2007 C
&
26886 of 2007 A

Dated, this the 18th day of September, 2007

JUDGMENT

The challenge in all these Writ Petitions are directed against a notification issued by the Special Tahsildar (LA), Civil Station, Kozhikode under Section 4(1) read with Section 17(4) of the Land Acquisition Act (for short 'the Act') for the purpose of widening Francis road - Mankavu - Konthanari road. Notification was published in the Gazette dated 26.3.2005. It was also published in Mathrubhumi and Desabhimani Dailies dated 1.4.2005; in the Village Office on 31.10.2005 and in the locality on 30.10.2005. Section 6(1) declaration was made on 27.10.2006.

2. One of the main reliefs sought for in all these Writ Petitions is that land acquisition proceedings have lapsed since Section 6(1) declaration was published after the expiry of one year from the date of gazette notification dated 26.3.2005. It is also challenged that Land Acquisition Officer is proceeding against the directions issued by this Court in W.P.(C) Nos.31774/2005 and 31813/2005.

3. According to the petitioners, the petitioners in W.P.(C) No.3368/2007 had filed W.P.(C) No.31813/2005, petitioners in W.P.(C)

No.3484/2007 had filed W.P.(C) No.31774/2005, petitioner in W.P.(C) No.4064/2007 had filed W.P.(C) No.32068/2005 and the petitioner in W.P.(C) No.4107/2007 had filed W.P.(C) No.33886/2005 before this Court. This Court heard W.P.(C) Nos.31774/2005 and 31813/2005 together and disposed of by a common judgment on 16.11.2005. When W.P.(C) Nos.31774/2005 and 31813/2005 were taken up for hearing the learned Government Pleader who appeared for the respondents submitted that the urgency provisions under Section 17(4) of the Act were not invoked in those cases and the writ petitioners can file their objections under Section 5A of the Act. This Court held that since it was conceded that petitioners have a right to file objections under Section 5A of the Act, no cause of action had arisen for the writ petitioners and directed the Land Acquisition Officer to consider and dispose of the objections filed by the writ petitioners in those Writ Petitions by conducting enquiry under Section 5A of the Act. It was further ordered that till the disposal of the objections the petitioners will not be dispossessed from the land. In other Writ Petitions also similar orders were passed by this Court. Thereafter the petitioners have filed these Writ Petitions for quashing Section 4(1) notification.

4. Counter affidavit was filed by the Land Acquisition Officer contending that the Executive Engineer, PWD (Roads) Division, Kozhikode is the requisitioning authority and the requisitioning authority by his letter

No.DB3.1976/97 dated 20.10.2004 intimated the District Collector that Francis road - Mankavu Konthanari road is very narrow and proposal for widening it has been put forward by the Calicut Development Authority more than 15 years prior to that date. Land Acquisition Officer has also informed that this road forms part of the road connecting Bye-pass of NH 17 with NH 47 and there was traffic conjunction. The Executive Engineer had obtained administrative sanction for invoking the urgency clause. The matter was reported to the Land Revenue Commissioner, Thiruvananthapuram for invoking Section 17(4) of the Act and the Land Revenue Commissioner by order dated 3.2.2005 had accorded sanction to acquire the land invoking urgency clause. Notification was published in the Kerala Gazette as well as in Mathrubhumi and Desabhimani Dailies dated 1.4.2005. It was also published in the Village Office and site. Section 6(1) declaration was published in the Gazette dated 27.10.2006. Since Section 17(4) was invoked the Land Acquisition Officer did not conduct an enquiry under section 5A of the Act. It was reported that only Section 6(1) declaration was published and the land was not taken possession. Since Section 5A enquiry was dispensed with the objections filed by the petitioners were forwarded to the requisitioning authority who is conversant with the facts of the case. It was admitted that as directed by this Court in W.P.(C) Nos.31381/2005 and 31774/2005 the Land Acquisition Officer had taken steps to hear the petitioners in

those Writ Petitions. The averments regarding the favouritism and mala fides are denied.

5. Learned Government appearing for the respondents submitted that on account of the objections raised by the residents on either side of the road the Government has reduced the width of the road from 15 to 13 metres. Government Pleader made available a copy of the Government Order, G.O.(Rt) No.762/2007/PWD dated, Thiruvananthapuram, 11.6.2007 as well as the files of the Land Revenue Commissioner, Thiruvananthapuram leading to the publication of notification under Section 4(1) read with Section 17(4) and declaration under Section 6(1) of the Act. The operative portion of the Government Order dated 11.6.2007 reads as follows:

> "Government have examined the matter in detail and are pleased to accord sanction to reduce the width of the road "Francis road Junction to Mankavu - Konthanari Road" to 13 metre from 15 metre subject to the condition that Construction of any type will not be allowed in the 2 metre width of land exempted by this order. However, the road will be widened further if necessitated in future."

It is also submitted that in view of the Government Order a revised alignment has also been prepared by the requisitioning authority and the possession of the land will be taken only after fixing the revised alignment. The files of the Land Revenue Commissioner shows that a requisition in its proper form was received

from the District Collector, Kozhikode as per his letter No.B4..43501/2003 dated 17.12.2004 requesting the Land Revenue Commissioner to invoke Section 17(4) of the Act in this case. Since there was certain defects the proposal was sent back to the District Collector on 18.12.2004. The District Collector cured the defects and sent the proposal on 17.1.2005. The same was considered by the Land Revenue Commissioner on 3.2.2005 and sanction was accorded to invoke the provisions of Section 17(4) of the Act. This order was communicated to the District Collector on 8.2.2005. Based on that the Land Acquisition Officer issued a combined notification under Section 4(1) read with Section 17(4) of the Act in the Official Gazette on 26.3.2005. The notification was published in Mathrubhumi and Desabhimani Dailies dated 1.4.2005. A copy of the notification published in Mathrubhumi Daily dated 1.4.2005 was produced by the petitioners in these Writ Petitions. It is strange to note that the portion invoking Section 17(4) of the Act was conspicuously absent in the notification published in Mathrubhumi. Subsequently the copy of the notification was published in the Village Office on 31.10.2005 and in the locality on 30.10.2005. Section 6(1) declaration was published on 27.10.2006. But in the meanwhile petitioners in W.P.(C) Nos.3368/2007, 3484/2007, 4064/2007 and 4107/2007 had approached this Court challenging Section 4(1) notification. The judgment pronounced on 16.11.2005 shows that Government Pleader who appeared for the Land Acquisition Officer

and for the State Government before this Court had conceded that in this case Section 17(4) of the Act was not invoked. In spite of the fact that the notification published in the Official Gazette, Village Office and locality contains that clause this Court accepted that contention and directed the Land Acquisition Officer to conduct an enquiry under Section 5A of the Act. In view of the submission made by the learned Government Pleader before this Court that Section 17(4) was not invoked , there was no occasion for this Court to consider whether the respondents were justified in invoking Section 17(4) in this case. This Court had to proceed on the assumption that in this case urgency clause under Section 17(4) were invoked. In the counter affidavit filed in W.P.(C) No.3368/2007 Land Acquisition Officer had conceded that he will consider the objections filed by the petitioners though he had also raised a contention that since Section 17(4) of the Act was invoked no enquiry under Section 5A of the Act can be conducted in the case. In view of the judgment rendered by this Court in W.P.(C) Nos.31831/2005, 31774/2005, 33886/2005 and 32068/2005 it is the duty of the Land Acquisition Officer to conduct Section 5A enquiry in the case.

6. It is submitted by the learned Government Pleader that width of the road is reduced from 15 to 13 metres and new alignment will have to be prepared. It is true that though Government had taken up a stand that petitioners in W.P.(C) Nos.3484/2005 and 4107/20905 were heard and an order was passed, Land

Acquisition Officer shall conduct a fresh Section 5A enquiry in respect of all these petitioners and take a fresh decision after getting the new alignment fixed by the requisitioning authority.

In the result, all the Writ Petitions are disposed of in the following manner. There will be a direction to the requisitioning authority to fix the new alignment in accordance with the Government Order, G.O.(Rt) No.762/2007/PWD dated 11/6/2007 and make available a copy of the same to the Land Acquisition Officer. A plan shall be prepared in the presence of a responsible officer of the requisitioning authority and got it counter-signed by the requisitioning authority. Petitioners in all these Writ Petitions are at liberty to file fresh objections under Section 5A of the Act within two weeks from the date of receipt of a copy of this judgment. I make it clear that if any objections/petitions filed by the petitioners are pending, that shall also be considered. But in view of the confusion created in this case the petitioners are allowed to file fresh objections under Section 5A of the Act within two weeks from the date of receipt of a copy of this judgment. On receipt of such objections Land Acquisition Officer himself shall consider the same and if he finds any difficulty in taking a decision he may be process the file and and submit it before the District Collector or higher authority and not before the requisitioning authority, who shall consider the same and take a decision within three months from the date of receipt of objections/petitions. I also make it

clear that if the petitioners fail to file objections within two weeks from the date of receipt of a copy of this judgment, their objections will not be considered. Land Acquisition Officer shall hear the requisitioning authority also before disposing of the objections. I also make it clear that this concession is confined to the writ petitioners alone and no other persons other than the petitioners in these Writ Petitions are entitled to demand Section 5A enquiry on the strength of this judgment. Until the Land Acquisition Officer hear and dispose of the objections filed by the petitioners they shall not be dispossessed from the land in their respective possession.

K. PADMANABHAN NAIR,
JUDGE.

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